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THE SULLIVAN TRIAL.

On the 7th day of August, A. D. 1876, in the city of Chicago, Illinois, Alexander Sullivan shot Francis Hanford at his own door, for which he was subsequently indicted for murder, and put upon trial at the ensuing October Term of the Criminal Court of Cook county, before the Hon. W. K. McAllister and a jury, which trial resulted in a disagreement of the jury, and upon a second trial had in March 1877, before the same judge, the defendant was acquitted.

The circumstances attending the homicide, the prominence of the parties connected with it, and the unusual scenes that were witnessed in court upon the first trial, coupled with the fierce denunciation of the conduct of the presiding judge which was made by the daily press, all conduced to create great excitement in the public mind, which culminated at length in the disagreement of the jury, and in the presentation to the judge who presided of a numerously-signed petition requesting him to resign his office.

The occasion of this extraordinary proceeding was the fact that it had been noticed that the judge during the trial had ruled constantly in favor of the defendant; had refused to give to the jury the statutory law as to manslaughter without comment, at the request of the prosecution; and had given skilfully drawn instructions to the jury of his own drafting, putting the case in the best possible light for the defendant, and had permitted the crowd during the trial to applaud, or otherwise audibly express their approval or dis-

approval of the sentiments of the respective counsel engaged in the case, which was carried to such length as caused the judge from the bench to say that he was powerless to prevent it, a condition of things that no circumstances can excuse, much less justify, without sweeping away the last vestige of the dignity and respect which should surround the administration of justice, and substituting for the law itself the will of a mob.

The acquittal of the defendant upon the second trial has helped to create a wide-spread belief among the people, either that in the conduct of these trials justice was outraged and the administration of the law perverted, or else that the law in this country gives but little protection to human life.

To properly understand the case, a statement of the leading facts is essential.

The defendant, Alexander Sullivan, for about three years previous to the homicide, had been secretary of the Board of Public Works of the city of Chicago. His wife, Margaret Sullivan, to whom he had been married about two years, was a professional writer for the daily papers, and both were recognised as reputable members of society.

Upon the afternoon of the 7th of August 1876, which was the day of the homicide, the Common Council of the city of Chicago was in session, and before it was then pending the question of the confirmation of five members of the Board of Education; while the council was so in session, the defendant went from his office in the same building to the ante-chamber of the council, and was told as he entered it by several friends, that an attack infamous and brutal in its character had just been made in the council upon his (Sullivan's) wife. He at first supposed it was a speech made, but soon learned that it had been presented to the council in the form of an anonymous communication by one of the aldermen. Sullivan went to him and told him that he was the husband of the lady involved, and that he had been informed that the attack was infamous in its implications, and consequently claimed the right to know who wrote it. The alderman replied that at a proper time he could give the author. More words passed between them, and Sullivan became somewhat excited, using harsh words, but on being told that the article did not involve his wife's reputation, he became more quiet and apologized for his hasty language. Shortly after, the subject was renewed in the ante-room in the presence of Sullivan, between

the alderman and one of the board of education who had also been attacked in the article. Sullivan again became excited and told the alderman if he refused to give the name of the author of the communication he would hold him responsible. Whereupon he was told that the author was Francis Hanford, and was asked if he knew him, to which Sullivan replied that he did not, and asked the alderman, who said he had no particular acquaintance with him, how he could publish an attack to the world upon the character of a lady without having any particular acquaintance with the author of the calumny; to which he replied that he considered the source reliable and trustworthy.

After the adjournment of the council the great impropriety of having presented publicly such a communication to the council was canvassed by several members in the presence of Sullivan. The latter then went to the reporters' desk to see the article, but could not do so, except in detached pieces, it being then in separate sheets and in the hands of several reporters. Sullivan, however, saw and copied from the first page these words: "The instigator and engineer-in-chief of all the deviltry connected with the legislation of the board is Mrs. Sullivan, the wife of the Secretary of the Board of Public Works. Her influence with Mayor Colvin was proved by her getting Bailey dismissed and her husband appointed in his stead." It does not appear that Sullivan saw any more of the article previous to the homicide, although he tried to do so, but the defence claimed that he left the council chamber impressed by what he had been told with the idea that the article in some of its portions inferentially charged his wife with criminal intimacy with the mayor of the city.

The remainder of the article in fact charged in effect that there was a corrupt ring in the school board, naming the members of such ring, detailing various acts and measures of the board of education which were charged to be intended to cripple the schools and which were therein attributed to the influence of such ring, and then charged Mrs. Sullivan with being the chief instigator of the alleged ring, as before stated, and that she was the secret agent of the Catholic church, and was seeking the overthrow of the common schools of the city. The victim of the homicide, Francis Hanford, was the principal of one of the public schools of Chicago, and had been assistant superintendent of all the schools, which position he had resigned. It was charged by the defence that he wrote the

anonymous article for the purpose of defeating the confirmation of the five members of the board whose nominations were then pending, in order to secure five other men, with the hope that this change in a body of fifteen would effect the restoration of himself to his former position of superintendent. But this seems as far as the evidence disclosed to be founded only on supposition.

From the council chamber Sullivan went to his house. His wife had been sick for several days, and had only left her room the day previous. Some three years before she had been seriously injured by an accident in a street car from which she had not recovered, and this left her predisposed to nervous excitability to an unusual degree. Sullivan told her she had been assailed that afternoon in the council chamber and read to her the portion of the article he had copied, and she insisted that the article must not be published in the newspapers. As she was not acquainted with Mr. Hanford it was suggested that the article might have originated in a mistake, and it was therefore best to see Mr. Hanford and obtain an explanation, and as upon inquiry it was ascertained that he lived but a few blocks away in the same street, it was arranged that they should visit there together, which was done. It should be borne in mind, however, that this portion of the case, as to the purpose in visiting Mr. Hanford, rested mainly upon the testimony of the defendant.

On reaching the residence of Mr. Hanford, about seven o'clock in the evening of the 7th of August last, the defendant, Sullivan, and his brother stepped from the carriage door across a little grass plat, some six feet wide, upon a sidewalk of nearly the same width, and inquired of Mrs. Hanford where her husband, the deceased, was. She immediately pointed him out, standing near by, conversing with an acquaintance, while she was herself sitting within a few feet of him, upon the steps of their dwelling. The man standing by the side of Hanford left as Sullivan and his brother approached him. Sullivan said, "My name is Sullivan; I am informed you are the author of a communication read in the common council this afternoon, which makes an attack, infamous in its nature, upon the character of my wife." Hanford replied, "If I have made any charges, I will substantiate them." "You deny then," said Sullivan, "being the author of the article?" He replied, "I neither deny nor affirm." Sullivan then said, "Alderman Van Osdel gave your name as the author of the article." To which Hanford replied, "If that is so, then you know already who the author is, and it is

not necessary for me to confirm the information." Sullivan then read to Hanford a portion of the article, characterizing it as infamous and repeatedly demanded a retraction, which Hanford repeatedly refused to give, and in substance said, that he would prove the truth of his communication when called upon at the proper time. Sullivan said, "Now is the proper time." Hanford replied, "I will be the judge as to the proper time." Being unable to get any promise of retraction from Hanford, Sullivan became excited, called Hanford a "dog," and knocked him down. Hanford was a man inferior in size to Sullivan, in feeble health, and at the time unarmed, while Sullivan was in the habit of carrying a revolver. From the point of the striking of Hanford, there is some disagreement as to what occurred. But as we understand the testimony, at this point Mrs. Sullivan jumped out of her carriage, and called to her husband "for God's sake not to get into a street quarrel, and not to hurt him," while a bystander, one McMullen, seized hold of Sullivan from behind, putting his right arm around Sullivan's neck, and pulling him off or holding him back from Hanford. As Hanford got up and threw his arms out, it is claimed, but controverted, that he struck Mrs. Sullivan, who had approached near, and that she exclaimed, "The scoundrel has struck me." At this juncture Sullivan was struggling to get away from McMullen, and Hanford came towards them in a staggering manner with his hands raised and open, while McMullen thrust his own body forward so as to interpose it between Sullivan and Hanford, and extended his left hand towards Hanford to keep him back, still retaining his hold with his right arm around Sullivan's neck. Thereupon, Sullivan drew his revolver from his right hip pocket, cocked it, thrust it past the body of McMullen, and shot Hanford fatally in the abdomen, when he was about six feet from him.

The defence assumed two positions: First, that the killing was in self-defence; secondly, that the defendant was justified in killing Hanford on account of the attack made upon his wife in the communication to the council and his refusal to retract it.

As to the first line of defence, admitting the full force of the rule of law that if one be assaulted in such a way as to induce in him a reasonable and well-grounded belief that he is actually in danger of losing his life or receiving great bodily harm, he will be justified, under the influence of such apprehension, in defending himself even to the taking of the life of his assailant, and this whether

the danger be real or only apparent; yet it is well nigh impossible to believe that Sullivan could have had any reasonable apprehension of great bodily harm either to himself or to his wife from Hanford, even if he or his wife was struck by Hanford after having been knocked down himself. Besides, Sullivan sought the meeting, went to it armed, and struck the first blow.

We had hitherto supposed it to be settled in Illinois, as elsewhere, that if a defendant in any way challenged a fight and went to it armed, he could not afterwards maintain that in taking his assailant's life he had acted in self-defence: *Adams* v. *The People*, 47 Ill. 376; *Vaiden* v. *Commonwealth*, 12 Grat. (Va.) 717; *Dock* v. *Commonwealth*, 21 Id. 912; *Mitchell* v. *State*, 22 Ga. 234; *People* v. *Stowcifer*, 6 Cal. 405; *Evans* v. *State*, 44 Miss. 762; *Stewart* v. *State*, 1 Ohio St. 66; *State* v. *Stoffer*, 15 Id. 47; *State* v. *Hays*, 23 Mo. 308; *State* v. *Starr*, 38 Id. 270. Yet the court instructed the jury that "if they believed from the evidence that the defendant, in good faith and without any desire to provoke a quarrel with or to otherwise injure or kill said Hanford, sought an interview with said Hanford for a lawful and peaceable purpose, and during said interview a quarrel ensued between said defendant and said Hanford, and during said quarrel said defendant knocked down said Hanford, and was then removed away from him by one McMullen, and did not thereafter further attempt to strike or injure said Hanford; and if the jury further believe from the evidence that said Hanford followed up said defendant and sought to renew or further prosecute the quarrel by attempting to strike or otherwise injure said defendant, this would not deprive the defendant of the right of defending himself from such an assault on the part of said Hanford." Or, in other words, we suppose that it was intended that the jury should infer that in these circumstances the defendant had a right to shoot Hanford; whereas we think the law to be that no such right exists, where, as in this case, there was no cessation of the affray before its final termination and the defendant being the first assailant had not himself withdrawn from the affray, only as he was held back by a bystander: *Stoffer* v. *State*, 15 Ohio St. 47. If the law were otherwise, as said Lord HALE, "we should have all cases of murder or manslaughter, by way of interpretation, turned into *se defendendo*:" 1 Hale P. C. 482. Besides, the second position of the defendant that he was justified in killing Hanford is inconsistent with and overthrows the theory of self-

defence, for it impliedly admits that the only reason for killing him was because he and his wife had been wronged by the communication of Hanford to the council, and as he would not retract, therefore he killed him. This brings us to a consideration of the question whether the alleged provocation was a justification of the killing.

The admission in evidence of the communication to the council and what was said to Sullivan about it, can be sustained upon the ground of its tending to show what provocation Hanford had given, and the condition of Sullivan's mind; but if its admissibility be placed upon the ground of its being a part of the *res gestæ*, it would seem that there was such ample cooling time between the hour the communication was brought to the knowledge of Sullivan, and the hour of the homicide, that it would not reduce the killing, if done because of this provocation, from murder to manslaughter.

The propriety of the admission of the testimony to show that the communication of Hanford to the council was false, is very questionable, because its obvious tendency was to convey the impression to the jury that the conduct of the deceased was a matter for their special consideration and reprobation; and for the further reason that whether the matter of the communication was true or false it gave the defendant no shadow of right to kill him.

To hold otherwise, would be to put both the right of judging and the execution of the law into the defendant's own hands—a principle not to be for a moment tolerated in civilized society.

As it was said by the learned judge in *Hare's Case* (Wharton on Homicide, 2d ed. 715), "The law does not and will not permit any individual or body of men to become their own avenger, and if they attempt it and injuries to person or property follow, they are criminally responsible for their conduct. If courts of justice should once recognise this wild right of private vengeance, it is evident that the bonds of social order and security would be torn asunder, and the cannon and the musket become the substitute for the bench and the jury box, in measuring out the nature and amount of punishment to offenders against public law. The concession of such a right of self-vindication would be the immediate and complete demolition of all public safety, the surrender of all the powers of government and the termination of the supremacy of the law."

The court in one of its instructions to the jury told them that in the absence of proof tending to show the truth of the charges in the communication to the council they were bound to find them both

false and malicious, and continued, "the publication of such charges by sending them to other parties to be read or by printing them in the newspapers, is by the laws of this state a criminal offence; and if the jury believe from the evidence in the case that Hanford was the author of that article, and he sent it to Van Osdel for the purpose of having it made public, then Hanford was guilty of an offence made criminal by the laws of this state. It was the clear legal light and it was the duty of Sullivan to protect his wife against those charges; it was his right and it was his duty to, if possible, suppress their publication, and to demand from their author an explanation or a retraction," &c.

The jury could hardly fail to understand this instruction, as applied to the facts, to mean, that the defendant had the legal right to protect his wife against those charges in the way he did, to wit, by shooting down the author of them.

The acquittal of the defendant upon such ruling is not surprising. But the defendant cannot be justified. Admitting all that his counsel claim for him in the evidence in the way of provocation and mitigating circumstances, still the irresistible conclusion is, that there was no necessity upon him, either real or apparent, for the killing of Hanford, and therefore at least he was guilty of manslaughter, and of that crime an intelligent public opinion can never hold him guiltless.

CHAS. H. WOOD.

RECENT AMERICAN DECISIONS.

Supreme Court of the United States.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *v.* FRANCISCA SCHAEFER.

A policy of insurance taken out by husband and wife, on their joint lives for the benefit of the survivor, is not impaired by a subsequent divorce, even where there are no issue of the marriage.

An insurance on life is not a contract of indemnity, and it is valid, if there is in good faith an insurable interest at the time of the making of the policy, though it afterwards changes in amount or ceases altogether.

Any reasonable expectation of pecuniary benefit or advantage from the continued life of another, creates an insurable interest in such life.

An attorney is not a competent witness in a United States court to testify to facts communicated to him by a client in his professional capacity, although he would be competent by the law of the state in which such court may be sitting.

The rules of evidence in the federal courts, not affecting rights of property are under the control of Congress, and the Acts of Congress have made communications between counsel and client privileged.